

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13424, Klamath County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION AND A CHANGE IN
)	PLACES OF USE

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

JOSEPH L. HARTER, SUSAN M. HARTER, ANDY
HARTER AND KERRY HARTER
10902 SWAN LAKE RD
KLAMATH FALLS, OR 97063

Findings of Fact

1. On April 23, 2020, JOSEPH L. HARTER, SUSAN M. HARTER, ANDY HARTER AND KERRY HARTER filed an application to change the point of appropriation and place of use under Certificate 22847, and to change the places of use under Certificates 33176, 83328, 87897, and 88113. The Department assigned the application number T-13424.
2. Notice of the application for transfer was published on May 12, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 29, 2020, the Department contacted the applicants by written correspondence to notify the applicants and the applicants' agent of deficiencies in the application. Aerial imagery identified structures located within the remaining right, that haven't been irrigated within the previous five years, and need to be removed. Clarification is also needed regarding the acres for supplemental irrigation that are changing place of use under Certificate 83328. The Department requested that the deficiencies be resolved by February 1, 2021. The applicant's agent submitted a revised map for Certificate 22847, and a revised Table 2 and map for Certificate 83328 the same day.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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4. On January 4, 2021, the Department contacted the agent regarding the map for Certificate 22847. The acres for the remaining right was incorrectly identified. The agent submitted a revised map the same day.
5. On January 28, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13424 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 1, 2021, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. The portion of the first right to be transferred is as follows:

Certificate: 22847 in the name of C. FRED COLLMAN (perfected under Permit U-250)
Use: IRRIGATION of 25.7 ACRES
Priority Date: AUGUST 2, 1948
Rate: 0.32 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
37 S	10 E	WM	30	NE NW

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed Change
37 S	10 E	WM	30	NE NE	1.3	POU
37 S	10 E	WM	30	NW NE	2.2	POU/POA
37 S	10 E	WM	30	SW NE	9.3	POU/POA
37 S	10 E	WM	30	SW NE	0.9	POU
37 S	10 E	WM	30	SE NW	0.2	POU
37 S	10 E	WM	30	NW SE	3.3	POU
37 S	10 E	WM	30	NW SE	8.5	POU/POA
Total					25.7	

7. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 22847 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	30	NW NE	WELL 1 - 1250 FEET SOUTH AND 2560 FEET WEST FROM THE NE CORNER OF SECTION 30

8. Transfer Application T-13424 proposes to move the authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of appropriation in miles (mi.)
37 S	10 E	WM	19	SW NE	WELL 3 - 1630 FEET SOUTH AND 2220 FEET WEST FROM THE NE CORNER OF SECTION 19	0.9 mi.
37 S	10 E	WM	19	SE SW	WELL 2 - 670 FEET NORTH AND 2760 FEET WEST FROM THE SE CORNER OF SECTION 19	0.4 mi.

9. Transfer Application T-13424 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
37 S	10 E	WM	19	SW NE	2.2	WELL 3
37 S	10 E	WM	19	NE SW	0.5	WELL 2
37 S	10 E	WM	19	NW SE	15.1	WELL 2
37 S	10 E	WM	19	SW SE	2.2	WELL 2
37 S	10 E	WM	30	NE NE	1.3	WELL 1
37 S	10 E	WM	30	NE SW	4.4	WELL 1
Total					25.7	

10. The portion of the second right to be transferred is as follows:

Certificate: 33176 in the name of MILTON LINDER (perfected under Permit S-21482)
Use: IRRIGATION of 12.5 ACRES
Priority Date: JUNE 12, 1952
Rate: 0.31 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under Permit number R-801.
Source: ANDERSON CREEK and RESERVOIR CONSTRUCTED UNDER APPLICATION NO. R-20521, PERMIT NO. R-801, a tributary of SWAN LAKE

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
37 S	9 E	WM	23	NE SW
37 S	10 E	WM	19	SW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	19	SE NE	2.3
37 S	10 E	WM	19	NE SE	10.2
Total					12.5

11. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 33176 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	9 E	WM	23	NE SW	POD 2 – 2530 FEET NORTH AND 2380 FEET EAST FROM THE SW CORNER OF SECTION 23
37 S	10 E	WM	19	SW NE	POD 1 - 2520 FEET SOUTH AND 2100 FEET WEST FROM THE NE CORNER OF SECTION 19

12. Transfer Application T-13424 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	19	SE NE	2.3
37 S	10 E	WM	19	SE NE	2.8
37 S	10 E	WM	20	SW NW	3.0
37 S	10 E	WM	20	NE SW	0.5
37 S	10 E	WM	20	NW SW	3.9
Total					12.5

13. The portion of the third right to be transferred is as follows:

Certificate: 83328 in the name of JELD WEN T AND R (perfected under Permit G-11432)

Use: PRIMARY IRRIGATION of 13.3 ACRES and SUPPLEMENTAL IRRIGATION of 12.5 ACRES

Priority Date: SEPTEMBER 13, 1990

Rate: 0.32 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in SWAN LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	19	SW NE	1590 FEET SOUTH AND 2200 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	19	SE NE	5.1
37 S	10 E	WM	19	NW SE	0.8
37 S	10 E	WM	20	SW NW	3.0
37 S	10 E	WM	20	NE SW	0.5
37 S	10 E	WM	20	NW SW	3.9
Total					13.3

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	19	SE NE	2.3
37 S	10 E	WM	19	NE SE	10.2
Total					12.5

14. Transfer Application T-13424 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	19	SW NE	0.8
37 S	10 E	WM	19	SE NE	2.3
37 S	10 E	WM	19	NE SE	10.2
Total					13.3

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	19	SE NE	5.1
37 S	10 E	WM	20	SW NW	3.0
37 S	10 E	WM	20	NE SW	0.5
37 S	10 E	WM	20	NW SW	3.9
Total					12.5

15. The portion of the fourth right to be transferred is as follows:

Certificate: 87897 in the name of RLF KLAMATH PROPERTIES LLC (perfected under Permit G-13725)
Use: IRRIGATION of 2.2 ACRES
Priority Date: JANUARY 7, 1999
Rate: 0.03 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: MAY 1 THROUGH SEPTEMBER 30
Source: A WELL (KLAM 50445) in the SWAN LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	19	SE SW	(KLAM 50445) 720 FEET NORTH AND 240 FEET WEST FROM THE S1/4 CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	19	SW SE	2.2

16. Transfer Application T-13424 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	19	NW SE	2.2

17. The portion of the fifth right to be transferred is as follows:

Certificate: 88113 in the name of RLF KLAMATH PROPERTIES, LLC (perfected under Permit G-12865)

Use: IRRIGATION of 22.1 ACRES

Priority Date: FEBRUARY 27, 1995

Rate: 0.276 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: A WELL in the KLAMATH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	30	NE NW	1250 FEET SOUTH AND 40 FEET WEST FROM THE N1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	30	NE NE	1.3
37 S	10 E	WM	30	SE NW	0.9
37 S	10 E	WM	30	NE SW	2.1
37 S	10 E	WM	30	NE SE	17.8
Total					22.1

18. Transfer Application T-13424 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	30	NE NE	1.3
37 S	10 E	WM	30	SW NE	9.3
37 S	10 E	WM	30	SE NW	1.1
37 S	10 E	WM	30	NE SW	1.9
37 S	10 E	WM	30	NW SE	8.5
Total					22.1

Transfer Review Criteria (OAR 690-380-4010)

19. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-13424.
21. The proposed changes would not result in enlargement of the rights.
22. The proposed changes would not result in injury to other water rights.
23. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation and change in places of use proposed in Transfer Application T-13424 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13424 is approved, the final order will include the following:

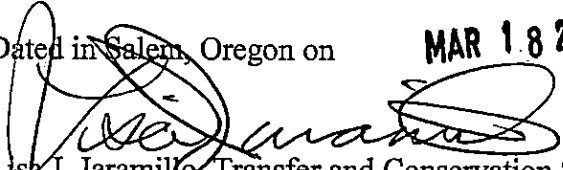
- 1. The change in point of appropriation and change in places of use proposed in Transfer Application T-13424 are approved.*
- 2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 22847, 33176, 83328, 87897, and 88113, and any related decree.*
- 3. Water right Certificates 22847, 33176, 83328, 87897, and 88113 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
- 4. The quantity of water, as authorized under Certificate 22847, diverted at the new points of appropriation (Well 2 and Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*

5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of appropriation (new and existing).*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The former places of use of the transferred rights shall no longer receive water under the rights.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2022. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

MAR 18 2021


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@oregon.gov

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

March 18, 2021

JOSEPH L. HARTER, SUSAN M. HARTER,
ANDY HARTER, AND KERRY HARTER
10902 SWAN LAKE RD
KLAMATH FALLS, OR 97063

SUBJECT: Water Right Transfer Application T-13424

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13424. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Klamath Falls Herald and News newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

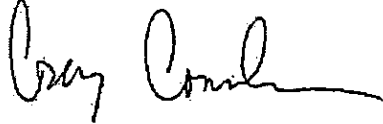
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane", with a long horizontal flourish extending to the right.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13424
Danette M. Watson, District 17 Watermaster (*via e-mail*)
Adkins Consulting Engineering, LLP, Agent for the applicant (*via e-mail*)

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